SUPREME COURT OF VICTORIA
COURT OF APPEAL

S EAPCR 2023 0099

ERDEN HASSAN Applicant

v

THE KING Respondent

JUDGES:	MACAULAY and KAYE JJA
WHERE HELD:	Melbourne
DATE OF HEARING:	11 September 2024
DATE OF JUDGMENT:	19 September 2024
MEDIUM NEUTRAL CITATION:	[2024] VSCA 212
JUDGMENT APPEALED FROM:	*DPP v Hassan* [2023] VCC 632 (Judge McInerney)

CRIMINAL LAW – Appeal – Sentence – Applicant convicted of 6 charges of obtaining financial advantage by deception – Total effective sentence of 2 years and 11 months' imprisonment with non-parole period of 20 months – Applicant property developer – Contracts of sale of properties to purchasers – Applicant inserted false name of real estate agents in order to deceive a bank and assist purchasers to obtain mortgage loans – Whether judge erred in finding that purchasers were financially vulnerable – Whether judge erred in finding applicant motivated by greed – Whether sentence manifestly excessive – Application for leave refused.

Clarkson v The Queen (2011) 32 VR 361; *Farrugia v The Queen* (2011) 32 VR 140, referred to.

Counsel

Applicant:	Mr G Traczyk
Respondent:	Ms J Warren

Solicitors

Applicant:	Portfolio Law Pty Ltd
Respondent:	Ms A Hogan, Solicitor for Public Prosecutions

MACAULAY JA
KAYE JA:

1 The applicant was charged on an indictment with ten charges of obtaining a financial advantage by deception. On 3 March 2023, following a trial in the County Court of 16 days, the jury convicted the applicant of six of those charges (charges 4, 5, 6, 8, 9 and 10), and acquitted him on the remaining four charges.

2 Following a plea made on his behalf, the applicant was sentenced, on 10 May 2023, as follows:

Charge	**Offence**	**Maximum**	**Sentence**	**Cumulation**
Indictment H12187140				
4	Obtain financial advantage by deception (contrary to s 82(1) of the *Crimes Act 1958*)	20 years' imprisonment (s. 6I of the *Sentencing Act*	2 years' imprisonment	1 month
5	Obtain financial advantage by deception (contrary to s 82(1) of the *Crimes Act 1958*)	20 years' imprisonment (s. 6I of the *Sentencing Act*	2 years' imprisonment	1 month
6	Obtain financial advantage by deception (contrary to s 82(1) of the *Crimes Act 1958*)	20 years' imprisonment (s. 6I of the *Sentencing Act*	2 years' imprisonment	1 month
8	Obtain financial advantage by deception (contrary to s 82(1) of the *Crimes Act 1958*)	20 years' imprisonment (s. 6I of the *Sentencing Act 1991*)	27 months' imprisonment	1 month
9	Obtain financial advantage by deception (contrary to s 82(1) of the *Crimes Act 1958*)	20 years' imprisonment (s. 6I of the *Sentencing*	27 months' imprisonment	1 month
10	Obtain financial advantage by deception (contrary to s 82(1) of the *Crimes Act 1958*)	20 years' imprisonment (s. 6I of the *Sentencing Act*	30 months' imprisonment	Base
Total Effective Sentence:		2 years 11 months' imprisonment		
Non-Parole Period:		20 months		
Pre-Sentence Detention declaration pursuant to s 18(1) of the *Sentencing Act 1991*:		None		
Section 6AAA Statement:		N/A		

Other relevant orders:	Sentenced as a continuing criminal enterprise

3 The applicant seeks leave to appeal on the following grounds:

> Ground 1: The learned sentencing judge erred by finding that the purchasers were vulnerable.
>
> Ground 2: The learned sentencing judge erred by reaching a finding as to the motivation of the applicant.
>
> Ground 3: The learned sentencing judge erred by reaching a finding that the purchase price was inflated.
>
> Ground 4: The learned sentencing judge erred in his application of the parity principle by imposing a sentence that attached excessive weight to the sentencing of Akkala, Anand and Becker.
>
> Ground 5: The individual sentences, orders for cumulation, total effective sentence and non-parole period are manifestly excessive in light of the principle of totality and the significant factors in mitigation.

Circumstances of offending

4 At the time of the offending, the applicant operated a licensed real estate agency, the Erden Property Group Pty Ltd ('Erden'). That agency purchased, sold and leased commercial, industrial and residential property, including on its own behalf.

5 In 2014, the applicant entered into an arrangement with Rama Akkala ('Akkala'), a loan introducer at the Australian and New Zealand Banking Group ('ANZ'), and Ankur Anand ('Anand'), an ANZ loans officer, to submit loan applications to ANZ. The loan applications were to be for the purchasers of properties sold by Erden. At that time, ANZ used an internal valuation tool in assessing applications for mortgage loans in respect of the purchase of real estate. If the loan to valuation ratio was 85 per cent or less, and if the property was sold through real estate agents, and the property was sold for under $750,000, then the ANZ did not undertake an independent valuation of the property. In such a case, ANZ accepted the contract of sale price as the value of the property.

6 During a meeting at which the arrangement was concluded between the applicant, Anand and Akkala, one of the topics discussed was valuations. Anand told the applicant that if the amount of the proposed borrowing was under an 85 per cent Loan-to-Value Ratio, and the sale was effected through a real estate agent, the bank would not automatically undertake a full valuation process. The applicant was also told that if he was the vendor of a property, he could not use his own name as the vendor's real estate agent, without triggering an automatic valuation process.

Charge 4

7 In December 2013, Tusambe and Lalia Marinjira agreed to purchase a house owned by Erden in Melton West for $420,000. They paid a deposit of $40,000, and agreed to pay to the applicant instalments of $3,000 per month until the loan could be organised through the bank.

8 In January 2015, the applicant arranged for Mr Marinjira to attend at the ANZ Highpoint

branch, where he met with Akkala and Anand. Mr Marinjira was told to sign documents at the bank, which were not explained to him. After the appointment, Mr Marinjira paid $1,500 into Akkala's bank account.

9 In March 2015, a loan application for $355,934.89 was submitted to the bank. The vendor listed in the application was Erden, and the vendor's agent was listed as YPA Estate Agents Melton, notwithstanding that Mr and Mrs Marinjira had only dealt with the applicant. The contract of sale also identified the vendor's real estate agent by the name of YPA Agents. A version of the contract of sale, signed by the applicant, was subsequently seized by police from his office.

Charge 5

10 In early 2011, Mr and Mrs Juresic were looking for alternative accommodation after they had received notice to vacate their rented premises. During an internet search, Miro Juresic learnt that Erden was selling properties off the plan. On 14 February 2011, he signed a contract with Erden to purchase a house in Melton West for the price of $427,000. He paid a deposit of $40,000, and subsequently paid instalments of $623 per week. Mr and Mrs Juresic moved into the property in April 2011.

11 About seven or eight months later, the applicant arranged for Mr Juresic to attend the ANZ Bank to finalise the loan application. Mr Juresic met Akkala at the bank, and paid him $1,000 in cash, which was pre-arranged. Akkala then introduced Mr Juresic to Anand. At the trial, Mr Juresic gave evidence that he did not sign any documentation in connection with the loan, which he subsequently received from ANZ. A contract of sale for the property, containing falsified real estate agent details, was subsequently seized by police from the applicant's office. It was different to the version received by ANZ.

Charge 6

12 In November 2013, Sifa Kachunga met the applicant, who had been recommended to her by some of her friends. Ms Kachunga and her husband, Mr Momari, agreed to purchase a house in Melton West from the applicant for $375,000. The price was subsequently increased to $395,000. Ms Kachunga paid a partial deposit of $10,000 in cash. She was told that she needed to pay $25,000 in total. On 11 November 2013, Ms Kachunga and Mr Momari commenced paying the applicant $1,400 per fortnight towards the deposit.

13 Eventually, the applicant arranged for Ms Kachunga and Mr Momari to attend the ANZ to finalise the loan. Ms Kachunga's evidence was that she refused to sign the ANZ letter of offer, because the price stated on it exceeded the contract price that she had originally agreed to pay the applicant. They then left the bank and discussed the matter with the applicant. Subsequently, Ms Kachunga was granted a loan by the ANZ. The contract of sale, dated 2015, specified Barry Plant Doherty as the real estate agent. Ms Kachunga gave evidence that she did not know Barry Plant Doherty, and she had only dealt with Erden. A copy of the contract of sale was subsequently seized from the applicant's office.

Charge 8

14 On 23 September 2013, Charlotte Mandjundju purchased a house in Melton West through Erden. The purchase price was $420,000. Ms Mandjundju paid the deposit by three instalments, totalling $25,000. She then commenced paying the applicant $1,236 per

fortnight. She believed at that time that she was the owner of the property.

15 Subsequently in 2015, the applicant requested Ms Mandjundju to initial a contract of sale dated 2015, which listed the real estate agent as Barry Plant Doherty. Ms Mandjundju only dealt with Erden. She did not have any dealings with Barry Plant Doherty. Ms Mandjundju was also requested to attend the ANZ Bank, where she paid Akkala $1,500. She met with another person at the bank, who told her that her loan had been approved. The version of the contract of sale subsequently seized from the applicant's office had a number of differences to the one received by the bank.

Charge 9

16 In 2013, Lofombo Liolongo met the applicant at his office in Derrimut. The applicant showed him land in Melton West. Mr Liolongo agreed to purchase the property as a house and land package. The purchase price was $445,000, and Mr Liolongo made two payments of $20,000 each as a deposit. Thereafter, he paid Erden $1,077 per fortnight. Mr Liolongo signed documents relating to the purchase, but he did not understand what he was signing.

17 Mr Liolongo made an application for a loan to Delphi Bank in February 2015, but it was rejected because he did not have sufficient income to make the repayments. Subsequently, the applicant's son took Mr Liolongo and his wife to ANZ to meet Akkala and Anand. Mr Liolongo gave $1,500 to the applicant to pay to Akkala. The contract of sale that was submitted to ANZ listed the real estate agent as Barry Plant. Mr Liolongo, in his evidence, said that he did not deal with Barry Plant concerning the purchase of the property. Mr Liolongo signed an ANZ home loan offer at Highpoint in the sum of $375,000.

Charge 10

18 In 2013, Ms Dau, who could not read or write English, was referred by a friend to the applicant to assist her to buy a house. She entered into an agreement to purchase a land and house package in Truganina from the applicant for $420,000. She paid a $7,000 cash deposit, and thereafter paid $1,100 fortnightly to the applicant.

19 In April 2015, the applicant took Ms Dau to the ANZ Bank and told her that Akkala would help with a loan for the purchase price. A copy of the contract of sale, subsequently seized from the applicant's office, detailed the real estate agent as Ray White, and bore the signature of the applicant.

The jury verdicts

20 The loans, that were the subject of the six charges on which the applicant was convicted, totalled $2,206,409.70. Each of the six charges specified two particulars as false representations alleged to have been made by the applicant, namely, that he falsely represented to ANZ:

(a) the vendor's estate agent on the contract of sale;

(b) the statement of financial position of the applicant.

21 In each instance, the jury specified that it convicted the applicant in respect of particular (a), namely, that he had falsely represented on each contract the name of the estate agent. It was common ground, on the plea, that the jury had determined that the applicant was aware of the

policy of the ANZ Bank at the time that, if the borrowing was under 85 per cent of the contract price, and if the sale was effected by a real estate agent who was independent of any association with the vendor, then the loan was likely to be approved without the need for further valuation.

The plea

22 The applicant was born in Cyprus in 1965. He migrated to Australia with his parents and younger siblings in 1970. He completed Year 12 level secondary education, and, after leaving school, gained a Certificate IV in Accounting (Real Estate Licences) from Victoria University and a Certificate IV in Finance and Mortgage Broking. Between 1986 and 2003, he was in regular employment in a number of capacities. In 2003, he commenced to operate Erden Property Group Pty Ltd, which was a successful business, selling and leasing residential industrial and commercial property. The applicant is married and has two children. Good character evidence was called on the trial as part of his case.

23 On the plea, counsel for the applicant placed emphasis on the fact that the offences, in respect of which the applicant was convicted, took place over a confined period of eight weeks. The offences were not sophisticated, and they were not difficult to detect or prosecute. It was submitted that the applicant's offending was a relatively less serious example of obtaining a financial advantage by deception. In particular, it was submitted, the applicant did not hold a position of power, trust or responsibility which he abused. Further, the offending did not result in the applicant appropriating a large sum of money, and there was no evidence that ANZ had sustained any loss.

24 Counsel further noted that the applicant had no previous convictions, he was otherwise of good character, and there had been no subsequent charges. Counsel placed particular emphasis on the fact that there had been a substantial and significant delay in the disposition of the matter. The offending went back to 2015. The applicant was interviewed in August 2017, and the trial did not commence until February 2023. It was further submitted that, as a result of the offending, the applicant had sustained extra-curial punishment. In particular, he had lost significant business opportunities, he had resigned as a director of Erden Property Group Pty Ltd, and he reasonably anticipated that his real estate licence would be cancelled.

25 In those circumstances, it was submitted that the judge should impose a community correction order.

Sentencing reasons

26 In his reasons for sentence,[1] the judge noted that the applicant's criminality encompassed only his actions in attaching to each contract false details as to the identity of the real estate agent involved in the transaction. In particular, the jury did not find any involvement, by the applicant, in the false statements of financial particulars forwarded to the bank by Akkala and Anand on behalf of each purchaser.[2]

27 The judge noted that, in view of the type of offence, the applicant was to be sentenced as a continuing criminal enterprise offender (s 6H(1)(c) of the *Sentencing Act 1991*), and that the maximum sentence for each offence was thus 20 years' imprisonment (s 6I).

1 *DPP v Hassan* [2023] VCC 632 ('Reasons').
2 Ibid [12]–[13].

28 The judge characterised the offending by the applicant in the following terms:

> I find, given the extensive experience of Mr Hassan as a developer/estate agent, his criminality was persistent and planned, and carried out in circumstances which, while they do not amount to a breach of trust, do amount to knowingly utilising the goodwill of the Bank to established agents, in order to flout the banking practice of the ANZ known to Mr Hassan, for self-gain.[3]

29 The judge did not accept the submission, made on behalf of the applicant, that the applicant's deception was not difficult to detect. The judge noted that each loan was approved in a very short time period. The judge further considered that the offending involved a 'high risk of loss to the bank'.[4]

30 The judge considered that the only explanation for the applicant's offending was greed. The applicant was a wealthy man, who had been very successful in land development. Each sale enabled the applicant to free up capital, by paying off mortgage debt to the National Bank, which the applicant had incurred to develop the blocks of land. The judge considered that that advantage to the applicant was a 'substantial positive' for him.[5] In addition, the applicant obtained payments by way of commission and profit.[6]

31 The judge gave detailed consideration to the question of the parity of the sentence to be imposed on the applicant with the sentences imposed on Anand, Akkala and a co-offender, Sheree Becker.[7]

32 The judge accepted that the applicant has an excellent previous character, and that he had been successful in business and in his family life. His Honour accepted that the applicant's prospects of rehabilitation were excellent. The judge also accepted that the substantial delay in the disposition of the charges was a powerful mitigating factor.[8] In addition, the judge accepted that the applicant had suffered extra-curial punishment as outlined in the plea made on behalf of the applicant.

33 On the other hand, the judge considered that the principle of general deterrence was of particular importance. The applicant's criminality had been persistent and planned, and it was committed for the purpose of substantial financial gain by making deliberate false statements as to the identity of the estate agent in each of the six contracts.[9] Taking those matters into account, the judge determined that a community correction order would not be appropriate as a sentence in the case.[10]

Ground 1 — submissions

34 Ground 1 is concerned with the judge's conclusion that the applicant had utilised purchasers who he knew to be financially distressed and who would not otherwise have been able to

3 Ibid [17].
4 Ibid [18].
5 Ibid [21].
6 Ibid [22].
7 Ibid [27]–[36].
8 Ibid [43].
9 Ibid [49].
10 Ibid [46].

complete their purchase unless the relevant valuations were not disputed,[11] and with the judge's consideration that there was a high risk of loss to the bank due to the economic status of those purchasers.[12]

35 Counsel for the applicant submitted that both findings were contrary to the facts. In particular, counsel noted that the purchasers, in respect of most of the terms contracts entered into in 2013, made regular payments, which demonstrated their capacity to service a mortgage. It was further submitted that there was no risk of loss to the bank, as all the loans were secured by first mortgage. Counsel further submitted that the fact that the purchasers might have been financially vulnerable at the time they entered into the contracts of sale in 2013 was not logically relevant to the offences in respect of which the applicant was convicted, namely, entering false details of the identity of the real estate agent on the contracts that were submitted to the ANZ in 2015.

36 In response, counsel for the respondent submitted that, to the extent that the judge found that the purchasers were financially vulnerable, that was based on their respective economic positions at the time they entered into the contracts with the applicant, and the fact that the loans would not have been successful but for the fraudulent and deceptive conduct committed by the applicant. Each of the purchasers were plainly vulnerable to exploitation, as they were unable, or at least unlikely, to obtain housing loans by more conventional means. Counsel further submitted that the fact that the purchasers were financially vulnerable was relevant to the risk to which the ANZ was exposed as a result of the applicant's conduct, and thus was relevant to an assessment of the gravity of the offending of which the applicant was convicted.

Ground 1 — analysis and conclusion

37 In considering the factual issue raised under ground 1, it is important to keep in mind that the judge made the observation, that the purchasers were financially vulnerable, based on the evidence that was adduced in the trial. On the hearing of this application, we have not been provided with the transcript of the trial, nor has counsel drawn our attention to any aspects of the transcript, which would contradict that conclusion by his Honour.

38 Further, and in any event, it is apparent, on the material that is before this Court, that the judge had a sufficient factual foundation upon which to base that finding of fact.

39 Each of the six purchasers had entered into 'Rent-to-Own' contracts with the applicant. Under the terms of those agreements, the prospective purchasers were entitled to live in the property that they intended to buy. The purchasers would then pay instalments to the applicant, a portion of which constituted rent, and the balance of which would be credited towards the deposit payable under the contract. That is, at the time at which they entered into the contracts, the purchasers themselves did not have sufficient funds presently available with which to pay the deposit for the purchase of the property.

40 In addition, as counsel for the respondent has pointed out, it is apparent from the submissions made by the prosecutor on the hearing of the plea that, in the case of three of the offences (that were the subject of charges 6, 9 and 10 respectively), the respective purchasers, quite plainly, did not have sufficient assets to fund the deposit.

41 In respect of charge 6, the deposit payable under the contract was $25,000. The purchaser,

[11] Ibid [36(a)].
[12] Ibid [18].

Ms Kachunga, paid $10,000 in cash, and she paid the balance by fortnightly instalments of $1,400 each.

42 In the case of charge 9, the applicant initially accompanied the purchaser, Mr Liolongo, to the Delphi Bank, but the loan application was rejected because Mr Liolongo did not have sufficient income to enable him to make the repayments.

43 In the case of charge 10, the purchaser, Ms Dau, paid an initial instalment of $7,000 towards a total deposit of $42,000. Ultimately, she borrowed the balance of the deposit, $35,000, in cash from friends in the African community.

44 It must be borne in mind that the basic purpose of the fraudulent use by the applicant, of the false name of a real estate agent on each contract of sale, was intended to circumvent the requirement by the ANZ that there be an independent valuation of the property to ensure that the borrowing was under the prescribed 85 per cent loan to valuation ratio. In that sense, each of the purchasers were necessarily vulnerable. They were each borrowing a large sum of money to purchase a property without the production of an independent valuation to ensure that the security, that they provided to the bank, would be sufficient to repay the amount borrowed by them if, ultimately, the purchasers were unable to meet their obligations under the mortgage.

45 For those reasons, contrary to ground 1, the judge did not err in finding that the purchasers were each financially vulnerable.

46 Further, and contrary to the submissions made on behalf of the applicant, that consideration was relevant to an evaluation of the gravity of the offending. The financial vulnerability of each of the purchasers was relevant to an assessment of the risk to which the ANZ was exposed as a consequence of the offending by the applicant. The fact that each of the purchasers were financially vulnerable increased the risk to which the bank was exposed, as a result of the fraudulent conduct by the applicant, which had diverted the bank from undertaking an independent valuations of the properties in question. In circumstances where the loan-to-value ratio was high, that risk was magnified by the elevated possibility that the true value of the security property was less than the sale price.

47 For those reasons, ground 1 of the application for leave to appeal must fail.

Ground 2 — submissions

48 Ground 2 is directed to the finding by the judge that the motivation for the offending was greed.[13]

49 In support of ground 2, counsel for the applicant submitted that the sentencing judge erred in finding that the purpose of each sale was to free up capital.[14] Counsel submitted that that conclusion was erroneous, as the discharge of the mortgages in each case involved the loss to the applicant of the mortgaged properties as assets. Counsel submitted the judge failed to properly analyse how it was that the applicant enriched himself in the sense that he acted out of greed. In particular, counsel noted, the amount advanced by the bank ($2,206,09.70) is not a measure of any enrichment of the applicant. Counsel submitted that the fact that the transactions in question resulted in freeing capital for the applicant did not sustain a finding by the judge that the applicant had been motivated by greed.

13 Ibid [19]-[23].
14 Ibid [20]-[22].

50 In response, counsel for the respondent noted that the applicant was a wealthy man, and there was no evidence to suggest that the offending occurred as a result of any financial need. Accordingly, it was submitted, it was open to the judge to find that the only possible motivation was greed. In the case of each sale, the funds were utilised by the applicant to free up capital by paying out mortgages to the National Bank, which constituted a financial benefit to the applicant. In addition, the applicant obtained payments by way of commission and profits as a result of each transaction.

51 In that respect, counsel referred to written submissions made on behalf of the applicant on the plea, which noted that the gain obtained by the applicant as a result of the offending consisted of commissions of $20,000 on each of the sales that were the subject of charges 6, 8 and 10, and which also noted that the applicant had achieved a 'normal sale' on the sale of the properties that were the subject of charge 4 and charge 9.

Ground 2 — analysis and conclusion

52 It was a fundamental element of the offences of which the applicant was convicted that he obtained a financial advantage by deception. In *Taylor v The Queen*,[15] Priest and Beach JJA defined 'financial advantage' as follows:

> A financial advantage occurs where a person is put in a favourable or superior economic, monetary or commercial position — a situation where the financial aspect is more beneficial than another — and would include a situation where a person is given the opportunity to earn remuneration in employment.[16]

53 The financial advantage, derived by the applicant, and specified on the indictment in respect of each charge on which he was convicted, was that he obtained a loan from the ANZ for each purchaser, which he would not have obtained if not for the fraudulent inclusion, on the contract of sale, of a false name of an independent real estate agent. The clear benefit to the applicant, as a consequence, constituted the sale of the property to a purchaser, who, but for the deception perpetrated by the applicant, may not have qualified to obtain a loan from the ANZ with which to purchase the property. It was not suggested that the applicant engaged in that activity for some altruistic or charitable purpose. The deception, engaged in by the applicant, was plainly motivated by a desire, by him, to sell each property in circumstances in which, if he had not practised the deception in question, that sale might not have occurred.

54 There was no evidence, or suggestion, that the conduct so engaged in by the applicant was the result of any financial need or other such cause. The applicant was a relatively wealthy man, engaged in a successful business of developing and selling properties. The transactions in question freed capital, which enabled him to make further investments. The judge, thus, was correct in concluding that the applicant was motivated, not by need, but rather, by a desire to further enhance his financial situation. In that sense, the judge was correct to characterise the applicant's motivation as greed.

55 That consideration was relevant to an assessment of the applicant's moral culpability, and to an assessment by the judge of the gravity of his offending.

56 It follows that ground 2 of the application for leave to appeal must fail.

15 [2019] VSCA 162.
16 Ibid [99] (Priest and Beach JJA).

Ground 3 — submissions

57 Ground 3 is directed to the observation, by the judge, that the contracts tendered to the bank were inflated from the original purchase price in the case of charge 4 and charge 10.[17] In support of ground 3, counsel for the applicant submitted that that finding by the judge was both factually incorrect and irrelevant, as it was not a part of the prosecution case.

58 In response, counsel for the respondent noted that in the passage of the reasons relied on by the applicant, the judge specifically made it clear that he was mindful that the applicant was not charged for any conduct in inflating the purchase price on any contracts. Accordingly, it was submitted, it follows that the judge placed no weight on that factor in determining the sentences imposed on the applicant.

Ground 3 — analysis and conclusion

59 The submission made on behalf of the respondent is correct. The passage in the judge's reasons, that is in question, was preceded by a consideration by the judge of the applicant's motivation for the offending. As discussed in respect of ground 2, the judge concluded that the applicant's motive was greed. His Honour noted that each sale freed the applicant's capital by enabling him to discharge mortgages, which he had incurred to the National Bank.[18] The judge then noted that, in each instance, the proceeds of the transactions were utilised to free the applicant and his entities from debt, which was a substantial positive for him. It was in that context that the judge proceeded to note that that positive occurred in circumstances in which the contracts tendered to the bank had inflated prices in respect of the transactions that were the subject of charge 4 and charge 10. However, the judge immediately qualified that obligation by stating:

> I make the point, of course, that Mr Hassan was not charged for this circumstance.[19]

60 In those circumstances, it is quite clear that the impugned remark made by the judge, that is the subject of ground 3, was by way of incidental aside, and did not form part of his Honour's assessment of the applicant's motivation or his culpability for the offending.

61 Accordingly, ground 3 also fails.

Ground 4 — submissions

62 Ground 4 does not complain that the judge failed to properly apply the parity principle. Rather, it contends that the judge erred in his application of that principle, by attaching excessive weight to the sentences the judge had imposed on Akkala, Anand and Ms Becker.

63 By way of explanation, before the involvement of the applicant, Ms Becker, who was apparently also a real estate agent, had entered into an arrangement with both Anand and Akkala involving 'Rent-to-Own' contracts. Ms Becker suggested to Akkala that the applicant also had clients involved in rent to own contracts, and that Akkala should meet with the applicant. It was shortly after that conversation that the applicant met with Akkala and Anand, and entered into the arrangement to which we earlier referred.

17 Reasons, [21].
18 Ibid [20].
19 Ibid [21].

64 In the course of his sentencing reasons concerning the applicant, the judge addressed the issue of parity. His Honour noted that counsel on each side had submitted that the parity principle had little application in respect of the sentences imposed on Anand and Akkala.[20] The judge briefly set out the reasons for that position.[21] The judge then referred to the sentence imposed on Ms Becker. His Honour noted that Ms Becker had been convicted of seven charges of being involved directly as to false representation as to the deposits in the contracts, and complicity as to the false payslips and other information tendered to the ANZ in respect of the contracts that were the subject of this case. The judge thus noted, correctly, that her criminality encompassed offending that was specified in particular (b) of the charges against the applicant, in respect of which the jury was not satisfied beyond reasonable doubt.[22] The judge then proceeded to compare the offending and circumstances of the applicant with those of Ms Becker.[23]

65 In the original written case, counsel then acting on behalf of the applicant submitted that the judge, by examining in some detail the circumstances of the offending and the sentences imposed upon Akkala, Anand and Becker, placed 'excessive emphasis' on the sentences imposed on each of those three persons, with the consequence that the applicant was deprived of the individual consideration to which he was entitled.

66 On the hearing of the appeal, counsel for the applicant did not seek to address ground 4 any further, and he relied on the submissions thus made in the written case.

Ground 4 — analysis and conclusion

67 The submission thus advanced on behalf of the applicant, in the written case, is without merit. It was appropriate for the judge to refer, and give some consideration, to the sentences imposed on the other persons who were involved in the criminal enterprise, in the course of which the applicant committed the offences for which he was convicted, notwithstanding that, in the strict sense, they may not have been co-offenders.[24]

68 Contrary to the submission in the applicant's written case, it is not at all evident in the sentencing reasons that his Honour in some way placed excessive emphasis on the sentences imposed on Akkala, Anand and Becker, or that he failed to give appropriate individual consideration to the applicant's case.

69 For those reasons, ground 4 does not succeed.

Ground 5 — submissions

70 Ground 5 contends that the individual sentences, the orders for cumulation, the total effective sentence and the non-parole period are each manifestly excessive. In his supplementary written case, and in oral submissions, counsel for the applicant made it clear that the applicant only relied on ground 5 in the event that he succeeded on grounds 1, 2 and 3. Although we have concluded that none of those grounds succeed, it is appropriate, in this case, to briefly outline the competing submissions made in respect of ground 5, and our

20 Ibid [27].
21 Ibid [29].
22 Ibid [30].
23 Ibid [30]–[36].
24 *Farrugia v The Queen* (2011) 32 VR 140, 143–146 [19]–[24] (Redlich and Bongiorno JJA); [2011] VSCA 24.

conclusions.

71 In the written case in support of ground 5, counsel for the applicant relied on a number of considerations to submit that the individual sentences, the orders of cumulation, the total effective sentence, and the non-parole period were each manifestly excessive. The applicant had no previous convictions, and he was otherwise of good character, with excellent prospects of rehabilitation. He was not in a position of power, trust or responsibility. It was contended that the offending did not involve any aggravating features, and it was confined to six charges over a period of eight weeks. Counsel submitted that the offending was not sophisticated, and it did not result in any loss to the ANZ Bank. Further, there was significant delay between the offending (in 2015), the police interview of the applicant (August 2017), and the date of sentence (May 2023).

72 Finally, counsel noted the difference between the sentences passed in respect of charges 4, 5 and 6 on the one hand, and the sentences imposed in respect of charges 8, 9 and 10. Counsel submitted that there was no justification in the judge imposing higher sentences in respect of the offending that was the subject of charges 8, 9 and 10, than the sentences imposed in respect of charges 4, 5 and 6.

73 In response, counsel for the respondent noted that the amount of financial advantage involved (being just over $2.2 million) and the circumstances of the offending justified the conclusion, by the judge, that the offending was objectively serious.[25] In particular, the judge observed that, in view of the extensive experience of the applicant, his criminality was persistent and planned, and was carried out in circumstances in which he took advantage of the goodwill of the bank to established agents, in order to circumvent the banking practice of the ANZ, which was known to him, for self-gain.[26] Further, the judge found that there was a high risk of loss to the bank, and the offending was motivated by greed. Counsel further noted that the applicant was not able to rely on remorse, and he did not have available to him the sentencing discount had he pleaded guilty. Although the applicant was of previous good character, nevertheless, it was appropriate for the judge to give primacy to the sentencing purposes of general deterrence and denunciation.

74 In those circumstances, it was submitted that the individual sentences imposed on the applicant, the order for cumulation, the total effective sentence and non-parole period are not manifestly excessive.

Ground 5 — analysis and conclusion

75 In order to establish the proposed ground of appeal, that the individual sentences, the orders for cumulation, the total effective sentence and the non-parole period are manifestly excessive, the applicant must demonstrate that the sentences were wholly outside the range of sentencing options available to the judge. Such a test is, of its nature, a stringent requirement.[27]

76 The starting point, for considering ground 5, is that the offending itself was objectively serious. As submitted on behalf of the respondent, the applicant's conduct was planned and calculated. He exploited the trust, which ANZ had reposed in well-established real estate

25 Ibid [14].

26 Ibid [17].

27 *Clarkson v The Queen* (2011) 32 VR 361, 384 [89] (Maxwell ACJ, Nettle, Neave, Redlich and Harper JJA); [2011] VSCA 157.

agents. In doing so, he engaged in a flagrant deception of the bank, using the names of fellow real estate agents, who were entirely ignorant of the deception being engaged in by the applicant. As concluded by the judge, the applicant's motive was greed. By his offending, he facilitated the sale of properties, which he owned, to purchasers who might otherwise not have qualified for mortgage loans from the ANZ. In doing so, the applicant did expose the bank to a substantial risk of loss.

77 The applicant did have available a number of relevant mitigating factors. He had no previous convictions, was otherwise of good character, and had good prospects of rehabilitation. Most importantly, there had been a substantial delay between the police interview in August 2017 and sentence in May 2023.

78 However, notwithstanding those mitigating circumstances, the judge was correct in concluding that he had no option other than to impose a custodial sentence on the applicant in respect of his offending. In view of the gravity of the offending, and the applicant's moral culpability for it, it could not be maintained that the individual sentences, the orders for cumulation, and the total effective sentence, and the non-parole period, were wholly outside the range of sentencing options available to the judge. To the contrary, in our view, the sentences imposed were appropriate and reasonable.

79 It follows that ground 5 of the application for leave to appeal must also fail.

Summary of conclusions

80 For the foregoing reasons, we have concluded that the applicant does not succeed on the proposed grounds of appeal. It follows that the application for leave to appeal against sentence must be refused.